

Hayden, Beth

From: Cecilia Bowman [cvof@iquest.net]
Sent: Tuesday, August 15, 2000 1:20 PM
To: Hayden, Beth
Subject: public input on reasonable security

Hello, Beth,

Hope all is well with you!

This input, from 1994, is still good today and we support it.

This input is from:

Cissy Bowman, individual
Center Valley Organic Farm, CSA and Co-op
Hoosier Organic Marketing Education, Inc.
OFMA
Indiana Certified Organic, Inc.
Organic Farmers Education and Information Foundation, Inc.

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>>>A PROPOSAL AND OUR PUBLIC COMMENT. Originally **courtesy** of **Ms**

>>>

>>>VALERIE ROSS, ATTORNEY AT LAW

>>>Formerly: 13268 LOMBARDY

>>>TURLOCK, CA 98380

>>>TEL, (209) 632-424 FAX (209) 632-5504

>>>

>>>November 23, 1994

>>>

>>>Re: The bonding provision of the **OFPA**

>>>

>>>Section 2116(e)(2))of the **OFPA** provides that any certifying agent that is a

>>>private person furnish reasonable security for protecting the rights of the

>>>participant. Because this provision is part of the law, we feel that it

>>>should not be ignored. "Furnish security" is a term of bonding language

>>>rather than insurance language. We suggest that the security called for here

>>>be satisfied by a bond, cash deposit or letter of credit.

>>>Section 2116(e)(2) further provides that the Secretary determine the amount.

>>>We suggest the amount of \$5,000. One may wonder, "why bother at all for only

>>>\$5,000?" However, we are not talking about insurance. But, rather, if the

>>>purpose is interpreted as "protecting the rights of the participants from the

>>>willful failure of the certifying agent to perform its statutory duties under

>>>the Act," it then becomes clear that there is great advantage to the

>>>Secretary, as well as the participants, in enforcing the provision.

>>>Participants would be assured of dealing with certifying agent who are

>>>responsible business persons as it takes a showing some degree of financial

>>>responsibility to qualify for either a bond or a letter of credit, even in

>>>the amount of \$5,000. The ability to make a cash deposit in that amount also
>>>demonstrates financial responsibility. However, the \$5,000 penal sum would
>>>not be so costly as to exclude small, regional certifiers from applying for
>>>accreditation - which is a further benefit to the participants.
>>>This provision also provides a continuing "guarantee" of financial
>>>responsibility because it is more difficult to m-obtain a bond/letter Of
>>>credit once a successful claim has been made. Perhaps the Secretary would
>>>want to provide for an increase in the amount of security required in the
>>>event of a successful claim against the security. It appears that the Act
>>>does not exclude such increase.
>>>Further, the "willful failure" aspect would, in effect, assist the Secretary
>>>in identifying any "bad apples". In the period between accreditation and
>>>renewal of accreditation, enforcement of this provision would provide the
>>>Secretary with a reasonable means, in and of itself, of keeping tabs on its
>>>certify agents and help to protect the participants from agents who have
>>>already failed in the performance of their statutory duties.
>>>
>>> Enclosed please find the bond form proposed by Dennis Wine, VP of the
>>>Surety Assoc. of America.
>>>
>>>
>>>Valerie
>>>
>>>
>>>DRAFT - August 30, 1994
>>>
>>>PRIVATE CERTIFYING AGENTS BOND
>>>ORGANIC FOODS PRODUCTION ACT OF 1990 (7 USC 6501 ET SEQ.)
>>>
>>> KNOW ALL PERSONS BY THESE PRESENTS, That _____, as
>>>Principal, and _____, as Surety, are held and firmly bound
unto
>>>the U.S. Department of Agriculture _____ as Oblige, in the
sum of
>>>_____ DOLLARS (\$) f o r t h e p a y m e n t o f
which sum
>>>the said Principal and Surety do jointly and severally bind themselves,
their
>>>heirs, executors, administrators, successors and assigns, and each and
every
>>>of them firmly by these presents.
>>> THE CONDITION OF THIS OBLIGATION IS SUCH THAT WHEREAS, The Principal
has
>>>made application to be accredited as a private certifying agent under the
>>>Organic Foods Production Act of 1990 meeting the requirements of 7 USC §
>>>6615, and
>>> WHEREAS, the Secretary of Agriculture had granted or is about to grant
>>>such accreditation, the Principal having entered into an agreement dated
>>>_____ with the Secretary as prescribed under 7 USC § 6515(d) of the
>>>Organic Certification Law, and
>>> WHEREAS, the Principal as an accredited private certifying agent is
>>>required to furnish security for the purpose of protecting the rights of
>>>participants in the applicable organic certification program under [7
USC §
>>>6515(e)].
>>> NOW THEREFORE, if the Principal shall abide by the provisions of the
>>>Organic Foods Production Act of 1990 (7 USC 6501 et seq.) and the terms
and

>>>>**conditions** of private certifying agent agreement entered into with the
>>>>**Secretary**, and not intentionally violate the rights of participants in the
>>>>**applicable** organic certification program, then this obligation shall be
null
>>>>**and void; otherwise to remain** in full force and effect, subject however
to
>>>>**the** following condition:
>>> No. 1. That this bond shall be continuous in form; the liability of
>>>>**the** Surety hereunder may however be terminated by giving thirty days'
written
>>>>**notice** thereof, by registered or certified mail, to the Principal and the
>>>>**U.S.** Department of Agriculture and upon giving such notice, the Surety
shall
>>>>**be** discharged from all liability under this bond for any act or omission
of
>>>>**the** Principal occurring after the expiration of thirty days from the
date of
>>>>**service** of such notice.
>>> No. 2. That any person aggrieved by an international act of the
>>>>**Principal** named in this bond in violation of the provisions of said
Organic
>>>>**Foods** Protection Act of 1990 (7 USC 6501 et seq.) or the agreement entered
>>>>**into** with the Secretary, may proceed against the Principal or Surety
herein,
>>>>**or** both, to recover damages for an intentional violation by the
Principal of
>>>>**the** rights of participants in the applicable organic certification
program as
>>>>**may** be awarded to the participant by a court of competent jurisdiction.
>>> No. 3. That regardless of the number of years this bond shall
remain in
>>>>**force** and effect, and regardless of the number of claims or claimants
seeking
>>>>**recovery** under this bond, nothing contained herein or elsewhere shall b
>>>>**construed** to impose upon the Surety any greater liability in the
aggregate
>>>>**than** the total amount of this bond.
>>> IN WITNESS THEREOF, the said Principal and Surety have signed and
sealed
>>>>**this** instrument this _____ day of _____ 20 ____.

>>>

>>>

>>>>**Principal** _____

>>>

>>>

>>>

>>>

>>>>**Surety** _____

>>>

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Cissy Bowman

Center Valley Organic Farm

<http://www.iquest.net/ofma/cvof.htm>

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